

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 7039 of 2001
m/s Rituraj farms Private ltd
K.A.94 Kavi Nagar Ghaziabad.
VS
Sh. S.K.Jain
S/o Sh.B.K.Jain
R/o 400 Sunder Vihar
Ballupur Road D.Dun.

Approved for reporting

~~Not approved for reporting~~

Date of decision 25.8.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 7039 (MS) of 2001

M/s Rituraj farms private Ltd.
K.A. 94-KAVI Nagar Ghaziabad. Petitioner
Vs

Sh.S.K. Jain
S/o Sh. B.K. Jain
R/o 400 Sunder Vihar
Ballupur Road, D.Dun. Respondents

Counsel for the petitioner Sh.Arvind Vashisht
Counsel for the respondent Sh. M.C. Pande.

Dated: -25-8-2004

Hon'ble Rajesh Tandon J.

Heard Sh. Arvind Vashisth learned counsel for the petitioner and Sh. M.C. Pande learned counsel for the respondents.

By the present writ petition the petitioner has prayed for issue of a writ, order or direction in the nature of certiorari quashing the impugned order dt. 7-9-2001 passed by the Additional District Judge.

Briefly stated the petitioner has filed a civil suit in the court of Civil Judge (Sr. Division) Dehradun against the respondents, which was registered as Original Suit No. 190 of 1999. In the said suit the Nagar Palika Parishad was impleaded as defendant No.2. During the pendency of the case an application was filed under Order 7 Rule 11 of the Code of Civil Procedure on 1-12-2000, the same was dismissed and a revision was filed which was allowed on 1-5-2001 with the following observations:-

“तदनुसार निगरानी स्वीकार कराते हुये विवादित आदेश दि० 1. 12.2000 निरस्त किया जाता है। वादी को आदेशित किया जाता है कि वह उपरोक्त अवलोकन के संबंध में आवश्यक संशोधन इस आदेश के पारित होने के 15 दिन के अन्दर अधीनस्थ न्यायालय में प्रस्तुत करें और अधीनस्थ न्यायालय उसका निस्तारण शीघ्रतिथीय नियमानुसार करें यदि वादी 15 दिन में ऐसा संशोधन प्रस्तुत नहीं करता है तो वादी को वाद प्रतिवादी सं० 2 के विरुद्ध पोषणीय नहीं होगा और अबेट हो जायेगा। तदनुसार पत्रावली अधीनस्थ को अविलम्ब वापस प्रेषित कर दी जायें।”

The plaintiff thereafter has moved the amendment application which was allowed on 10th May 2001 as will appear from the order of the revisional court.

Again a suit No. 190 of 1999 was filed by the defendant which was rejected by the Trial Court on 11-7-2001 and present revision has been filed against the said order which was allowed.

Counsel for the petitioner has stated the Nagar Palika has been duly impleaded and the amendment to that effect has been allowed on 10-5-2001.

I see no reason to interfere with the technicalities. It is settled law that the amendment relates back to the filing of the suit itself.

However it will be open for the petitioner to make a prayer for framing the additional issue in this regard.

Subject to above, the writ petition is allowed. No order as to costs.

Dated:- 25-8-2004

(RAJESH TANDON J.)

M.K.